

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NUMBER 1:20CV66

JANE ROE,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR EXTENSION OF
TIME TO FILE OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendants¹ moved for an extension of time to file their Opposition to Plaintiff's Motion for Partial Summary Judgment Against the Official Capacity and Entity Defendants. ECF No. 63. Plaintiff's response states that she "partially opposes defendants' requested extension," Pl's Partial Opp'n to Mot. for Extension ("Opp'n"), ECF No. 65, at 1, though Plaintiff does not specify what length of extension she would support.

¹ "Defendants" refers to the United States of America, Judicial Conference of the United States, Administrative Office of the United States Courts; United States Court of Appeals for the Fourth Circuit; Judicial Council of the Fourth Circuit; Federal Public Defenders' Office; and Chief Judge Roslynn R. Mauskopf, Director James C. Duff, General Counsel Sheryl L. Walter, Chief Judge Roger L. Gregory, Circuit Executive James N. Ishida, and Federal Public Defender Anthony Martinez, in their official capacities.

Plaintiff's partial opposition is based on her mistaken belief that Defendants should not be permitted to offer evidence in response to her summary judgment motion. In Plaintiff's view, Defendants may not "creat[e] an evidentiary record in support of Defendants' response brief" because Defendants have not produced information in response to Plaintiff's discovery requests. Opp'n at 1. But as Defendants have repeatedly explained, Plaintiff's discovery requests are in clear violation of the local rules, which provide that "Court-enforceable discovery does not commence" until, among other things, the Court resolves any pending Rule 12 motion. *See* LCvR 16.1(d), (f). Thus, Plaintiff's early discovery requests are improper, and Defendants are not obligated to respond to them. Likewise, Defendants are not obligated to serve initial disclosures at this early stage of the case.

Although discovery has not yet commenced, Plaintiff proceeded to file a summary judgment motion anyway. Having made that strategic choice, Plaintiff should not now be heard to complain that Defendants will present evidence in opposition to her motion. Plaintiff was free to ask the Court for leave to take early discovery if she believed there were grounds to support such a request, but Plaintiff failed to do so, except for her motion for John Doe discovery, which has not been granted. *See* LCvR 16.1(f) ("A party seeking early Court-enforceable discovery may file a motion for leave to take early discovery stating the reasons therefor."). Accordingly, the circumstances about which Plaintiff complains are the consequence

of *her decision* to move for summary judgment prior to the start of discovery and *her decision* not to seek early discovery from the Court. In short, now that Plaintiff has decided to move forward with summary judgment at this time, Defendants have every right to present their evidence in response to her motion.

As discussed in Defendants' motion, Defendants need additional time to gather evidence to oppose Plaintiff's motion. Accordingly, good cause exists for Defendants' requested extension and the Court should permit Defendants to file their opposition by September 28, 2020.

This the 8th day of September, 2020.

Respectfully submitted,

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